IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 4786 of 2002

Between:

D. Sambasivarao, S/o. Late Venkatramaiah,
R/o. Scindia New Colony, Gandhinagaram Road,
Visakhapatnam.

..... PETITIONER

AND

1 The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise,
Visakhapatnam.
3 The Prohibition and Excise Inspector,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings of the 2nd Respondent in Rc.No.298/2000/A2, dated 24-4-2001 confiscating the scooter bearing No.A.P.32-A-510 under Sections 45 and 46 of the A.P. Excise Act and Proceedings of the 1st respondent vide Proceedings No.1693/2001/DPE/B2, dated 9-1-2002 in confirming the Proceedings of the 2nd Respondent are illegal, arbitrary and violation of Article 14 of the Constitution of India and consequently direct the respondents to release the vehicle bearing No.A.P.32-A-510 by setting aside the above proceedings and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.KARNAMRAMESH

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

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ORDER:

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The petitioner claims to be the owner of a Scooter bearing No.A.P.32-A-510. The same was seized by the third respondent on 25.02.2001, when the petitioner was carrying 7 quarts of IML and 2 quarts Beer which are intended for consumption by defence personnel. A crime being Crime No.63 of 2000-2001 of Prohibition and Excise Station, Vishakapatnam-I, was registered and the matter was reported to the second respondent. The second respondent initiated action for confiscation of the Scooter under Section 46 of the A.P.Excise Act, 1968 (for short 'the Act') and after giving notice and obtaining explanation, by order dated 24.04.2001 ordered for confiscation of the Scooter. Aggrieved by the same, the petitioner filed an appeal before the first respondent, who confirmed the order of confiscation by impugned proceedings dated 19.01.2002.

Before the original authority as well as the appellate authority the petitioner raised the plea that the nine bottles of liquor seized by the third respondent belong to his friend who was preceding in another Scooter along with the petitioner and therefore, his vehicle cannot be penalized. Both the authorities rejected the same. The learned counsel for the petitioner raised the same contention before this Court.

Section 45 of the Act gives the things, which are liable for confiscation whenever an offence under the Act is committed. The movement of vehicle is used for commission of offence under the Act and the same is liable for confiscation under Section 46(2) of the Act. The contention that the liquor belong to some other person and is not owned by the owner of the vehicle cannot be a mitigating circumstance to wriggle out the rigour of Section 45 read with Section 46(2) of the Act. Therefore, the orders passed by the first respondent confirming the orders of confiscation of the second respondent cannot be said to suffer from any vice.

The writ petition is devoid of merits and the same is dismissed. No costs.

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(V.V.S.RAO, J)

05.07.2005

vs

To

1 The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise,
Visakhapatnam.
3 The Prohibition and Excise Inspector,
Visakhapatnam.

4 Two CCs to the G.P for Prohibition and Excise, High Court of A.P.,

Hyderabad(O.U.T).

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